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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF J.D. STRONG
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 9, 2009, BEGINNING AT 8:40 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

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Mr. Dan Lennington

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TYSON POULTRY AND COBB-VANTRESS, INC.:

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REPORTED BY: Laura L. Robertson, CSR, RPR

Exhibit 9

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1 pollutants to waters of the state, generally.

2 Q. Okay. Is it your understanding, Mr. Strong,
3 that the statute that you just referred to and the
4 management plans that are prepared pursuant to those
5 statutes prohibit the overapplication of poultry
6 litter?

7 A. I'm not sure -- Okay, what was the question
8 again? I'm sorry. I really am trying to follow here
9 but --

10 Q. Is it your understanding, Mr. Strong, that
11 the statutes that you just referred to and the
12 management plans for farmers that are prepared
13 pursuant to those statutes prohibit the
14 overapplication of poultry litter?

15 A. I believe that the statutes in regulatory
16 programs do prohibit it, yes.

17 Q. What about the nutrient management plans or
18 the animal waste management plans, do they prohibit
19 the overapplication of poultry litter on the Oklahoma
20 side of the basin?

21 MR. LENNINGTON: Object to the form.

22 THE WITNESS: I believe the management plans
23 spell out certain application criteria.

24 Q. (BY MR. GEORGE) And if a grower is
25 complying with those application criteria, are they

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1 over applying litter or are they applying an
2 appropriate amount of it?

3 A. I think in some cases they can be over
4 applying.

5 Q. Even when they are complying with an animal
6 waste management plan?

7 A. Yes.

8 Q. What is your basis for that belief?

9 A. The management plans are designed based on
10 very broad general criterion and on-site specific
11 basis, you can still have runoff of pollution into the
12 waters of the state, which is prohibited by state law.

13 Q. Have you ever seen an animal waste
14 management plan, Mr. Strong?

15 A. I have -- I'm sure I have glanced at them
16 before, yes.

17 Q. Okay. And just so I'm clear, it is your
18 position, Mr. Strong, that a farmer who receives an
19 animal waste management plan that has been approved by
20 the Oklahoma Department of Agriculture for land
21 application of poultry litter on their particular farm
22 can follow that plan in terms of the application rates
23 and areas, every jot and tittle and still be out of
24 compliance with Oklahoma law; is that right?

25 A. I think that that is possible, yes.

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1 pollution, but the phosphorus that comes out of a bag
2 from Home Depot that runs off into the stream is not
3 pollution. Is that what you're telling me?

4 MR. LENNINGTON: Object to the form.

5 THE WITNESS: As far as the state law is
6 concerned, that's true.

7 Q. (BY MR. TUCKER) Okay. Now, you have told me
8 that a farmer can get a nutrient management plan and
9 he can comply with that nutrient management plan and
10 still be violating the law because there can be site
11 specific runoff from his application of poultry
12 litter; is that right? Is that what you told us? Did
13 I get that right?

14 A. Yes, I believe so, yes.

15 Q. Now, what part of the nutrient management
16 plan tells the farmer, makes that disclosure to the
17 farmer, does any part of the plan tell him that?

18 A. I'm not familiar with every verse and word
19 of the nutrient management plan, so I'm not sure if
20 that is included in the nutrient management plan or
21 not.

22 Q. Have you ever even looked at one?

23 A. I have glanced.

24 Q. Have you ever read one?

25 A. Not thoroughly.

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1 Q. Are those measures set out in a nutrient
2 management plan?

3 A. There are some measures that would help to
4 mitigate.

5 Q. If the farmer follows those measures that
6 are in his nutrient management plan, is there
7 something else, some magic thing that the farmer can
8 use to determine that he's violated the law and
9 allowed pollution to occur?

10 A. Again, I think it is possible for them to
11 ensure that they are not causing violation of the law.

12 Q. How do they do that?

13 A. You simply not land apply the litter or have
14 any runoff whatsoever from the site.

15 Q. Well, maybe I misunderstood. I thought the
16 nutrient management plan that the farmer got courtesy
17 of the state Department of Agriculture basically says
18 you could apply it this many tons of litter to this
19 field this year. Did I get that wrong?

20 MR. LENNINGTON: Object to the form of the
21 question.

22 Q. (BY MR. TUCKER) Isn't that what it does?

23 MR. LENNINGTON: Object to the form of the
24 question.

25 THE WITNESS: Again, I haven't thoroughly

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1 read through the nutrient management plans. I know
2 they contain general guidelines for application rates.

3 Q. (BY MR. TUCKER) Are nutrient management
4 plans written specifically for each farm?

5 A. They are written for a farm, but also employ
6 some general guidelines, yes.

7 Q. Are they written by the farm or by the
8 pasture that seeks application of litter, for which
9 the farmer seeks application of litter?

10 A. I do not know the answer to that question.

11 Q. Well, I asked you to assume that a nutrient
12 management plan, if you ever read one, would be broken
13 down by pasture and would tell the farmer how many
14 acres in that pasture could receive litter and how
15 much litter per acre that pasture could receive for
16 the year that he wants to put on litter, I ask you to
17 make that assumption; okay?

18 A. Okay.

19 Q. If the farmer is told that he can put on
20 three tons of litter per acre or two tons per acre and
21 he applies two tons per acre to that farm, to that
22 pasture as called for by his nutrient management plan,
23 what more does the farmer have to do to ensure that he
24 is not causing runoff that pollutes the waters of the
25 state?

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1 A. Whatever else is necessary at his particular
2 operation to ensure that he doesn't cause runoff to
3 waters of the state.

4 Q. Well, what would that be, would he have to
5 build a dam along the edge of the stream?

6 A. Possibly, depending on his operation.

7 Q. Does the Secretary of the Environment
8 believe that farmers should build dams along the edges
9 of streams?

10 A. I believe they should do what is necessary
11 to ensure that there is no runoff of pollution to the
12 water.

13 Q. Do you believe that ranchers should build
14 fences along streams?

15 A. I believe that if that's what is necessary
16 to not cause pollution, that that would be a good
17 thing to do. I don't necessarily believe that they
18 are required.

19 Q. So this is a rule, this to prevent runoff to
20 the water to the state, really doesn't have any
21 standard, does it, it is just kind of a, you're on
22 your own to try to figure out whether it does or it
23 doesn't, you can comply with your that the plan tells
24 you that you can apply, but there is some unknown
25 standard that only we know, we being you, the state of

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1 right?

2 A. I don't know whether or not the farmers know
3 it.

4 Q. Can do it, can comply?

5 A. It is possible to violate the laws of the
6 state while complying with a nutrient management plan.

7 Q. And that's because some phosphorus can run
8 off?

9 A. Correct.

10 Q. How much?

11 A. I think --

12 Q. How much phosphorus?

13 A. It is a very site specific number.

14 Q. An 80 acre tract of land that has litter
15 applied to it, nutrient management plan says you can
16 put on three acres a year -- three tons per acre per
17 year. How much phosphorus runs off that land?

18 MR. LENNINGTON: Object to the form.

19 THE WITNESS: I don't know. That's just a
20 general --

21 MR. TUCKER: How much phosphorus would have
22 to run off that land to cross your threshold that
23 would make it pollution?

24 A. The law says zero runoff.

25 Q. Does phosphorus run off just plain dirt,

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1 A. They both get their root in a law, yes.

2 Q. Regardless of whether one is federal and one
3 state?

4 A. One is state.

5 Q. But they are both created, the requirement
6 is created by a law; correct?

7 A. Correct.

8 Q. Okay. And they both allow discharge into
9 the environment within the state of Oklahoma of
10 phosphorus; correct?

11 MR. LENNINGTON: Object to the form.

12 THE WITNESS: The point source permit does,
13 yes.

14 Q. (BY MS. LONGWELL) Okay. And when an animal
15 waste management plan says you can land apply a
16 certain amount of poultry litter to the land, to a
17 specific land, is that not a permission to apply a
18 certain amount of phosphorus into the environment
19 within the state of Oklahoma?

20 A. I think that requires some sort of legal
21 interpretation, but I don't necessarily believe that
22 it does.

23 Q. Do you agree with me that poultry litter
24 contains phosphorus?

25 A. Yes.